

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

HAKIEM JOHNSON,

Petitioner,

v.

CIVIL ACTION NO. 2:14-CV-6
The Honorable John Preston Bailey

TERRY O'BRIEN, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 16]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on November 19, 2014, wherein he recommends this Court construe the petitioner's § 2241 petition as a § 2255 motion and transfer this motion to the Eastern District of Pennsylvania for all further proceedings.

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91,


94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that service was accepted on November 20, 2014. [Doc. 17]. No objections have been filed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 16]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that this case be **CONSTRUED** as a § 2255 motion and **TRANSFERRED** to the Eastern District of Pennsylvania for all further proceedings. Further, this Court **DIRECTS** the Clerk of Court to reimburse the petitioner's Prison Trust Fund Account in the amount of \$5.00.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record, the Clerk of Court for the United States District Court for the Eastern District of Pennsylvania, and mail a copy to the *pro se* petitioner.

DATED: December 15, 2014.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE